

EXHIBIT L

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

16 Cr. 0746 (PKC)

5 DAVID BERGSTEIN,

6 Defendant.

7 -----x

February 27, 2018
9:30 a.m.

8 Before:

9 HON. P. KEVIN CASTEL,

10 District Judge

11 APPEARANCES

12 GEOFFREY S. BERMAN

13 Interim United States Attorney for the
Southern District of New York

14 BY: EDWARD IMPERATORE

ROBERT ALLEN

15 ELISHA KOBRE

Assistant United States Attorneys

16 BIENERT, MILLER & KATZMAN, PLC

17 Attorneys for Defendant

18 BY: THOMAS H. BIENERT, JR.

ANTHONY R. BISCONTI

19 SATTERLEE STEPHENS LLP

Attorneys for Defendant

20 BY: ANDREW L. FISH

21 - also present -

22 Ellie Sheinwald, U.S. Paralegal Specialist

23 Sarah Emmerick, U.S. Paralegal Specialist

Caroline Howland, Defense Paralegal Specialist

24 SA Shannon Bieniek, FBI

I2R7BER1

Bergstein - direct

1 (jury present)

2 THE COURT: Please be seated. Good morning, ladies
3 and gentlemen. Counsel and I have been working, and I
4 apologize we didn't bring you out sooner, but we're working.

5 All right. Mr. Bienert, you may call your next
6 witness.

7 MR. BIENERT: Yes, your Honor, we call the defendant,
8 David Bergstein.

9 THE COURT: OK.

10 DAVID BERGSTEIN,

11 the defendant, in his own behalf,

12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. BIENERT:

15 Q. So, Mr. Bergstein, you have obviously been here the entire
16 three plus weeks listening to the testimony in the case, right?

17 A. Yes.

18 Q. I'm going to touch on a couple of big picture topics and
19 then we will go through a narrative.

20 You've heard the testimony from Mr. Wellner and
21 Mr. Hallac, each giving their own testimony as to the nature of
22 their relationship with you in 2011 and '12 frame.

23 A. Yes.

24 Q. What was the relationship that you had with Mr. Hallac and
25 Mr. Wellner in Weston in terms of what it was to do and

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#10824
Bergstein - direct

1 proposed making a loan to one of my entities and then using
2 part of the proceeds of that loan to do the first leg of the
3 Pineboard funding.

4 Q. And is this what led to the TT Swartz IP loan?

5 A. Correct.

6 Q. Did you -- who was it who raised the idea of the TT Fund
7 being used to make the loan?

8 A. Again, I didn't know one fund from the other. They
9 proposed frankly initially making a \$10 million loan, and then
10 it evolved into what became the ultimate agreement and up to
11 \$25 million loan. They proposed making the loan. I did not
12 know what Wimbledon TT was, or Partners, or any of the other
13 funds.

14 Q. Did it matter to you what loan was used -- what fund was
15 used for the loan?

16 A. No.

17 Q. So, what is your understanding? If you can tell us, what
18 was sort of the overall structure that was agreed upon for the
19 TT Swartz IP loan?

20 A. Well, that is a very simple structure. Weston agreed to
21 loan up to \$25 million to Swartz IP, with a minimum of 12 and a
22 half million dollars. It was a five year loan subject to some
23 early call provisions which we described as redemptions. They
24 were represented by counsel. We went through a drafting of the
25 document, which I understood had been largely draft, because

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Bergstein - direct

1 they were considering almost an exact arrangement, and I
2 negotiated certain provisions, the most important one of which
3 is I said I am not doing the loan unless I can do what is
4 called related party transactions.

5 So, we modified the document in a drafting to allow us
6 to do related party transactions.

7 Q. You can take a look to the N003. Tell me if you recognize
8 what this is, sir.

9 A. Yes.

10 Q. Does this relate to what you just testified about
11 negotiating and modifying the draft note loan agreement?

12 A. Yes.

13 Q. Do you recognize who made changes to this draft?

14 A. Well, both Keith and -- both Wellner's lawyers -- I don't
15 know who they were -- would have made changes. And I think on
16 my side I probably just marked it up. I don't remember
17 specifically.

18 MR. BIENERT: I would like to move into evidence
19 Exhibit N003.

20 MR. IMPERATORE: Objection, your Honor. It's not an
21 executed agreement.

22 MR. BIENERT: It's not for that purpose, your Honor.
23 It's about the negotiations and alterations.

24 THE COURT: Overruled.

25 (Defendant's Exhibit N003 received in evidence)

I2rdber6

#10826
Bergstein - cross

1 A. There are two accounts both referencing the side letter.
2 They are not brokerage accounts. One of them, as the side
3 letter says, is a securities account, and the other one, as the
4 side letter says, is a loan account. So they're not brokerage
5 accounts, they are two accounts.

6 Q. When those were created in November 2011, they had no money
7 in them, right?

8 A. That's correct.

9 Q. And it was TT's money that infused that account, right?

10 A. Correct.

11 Q. Roughly 12-and-a-half-million dollars?

12 A. Correct.

13 Q. And that was the money, a portion of which you claim Swartz
14 IP lent to Arius Libra, right?

15 A. Correct.

16 Q. And you negotiated the loan agreement between TT and Swartz
17 IP?

18 A. Yes.

19 Q. And you helped edit the agreement and the note?

20 A. Yes.

21 Q. And you agreed that Swartz IP would meet the Tewksbury
22 returns plus one percent, right?

23 A. That's what the agreement said, that the rate of interest
24 that would be paid would be Tewksbury plus 1 percent, but it
25 doesn't -- it's not -- I didn't agree that it would meet the